

September 30, 2013

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*RE: Universal Service Contribution Methodology; Request for Review by inContact, Inc. of
a Decision by Universal Service Administrator, WC Docket No. 06-122*

Dear Ms. Dortch:

By this letter, inContact, Inc. ("inContact" or "the Company") requests issuance of an order by the Federal Communications Commission ("FCC" or "Commission") or its Wireline Competition Bureau ("Bureau") directing the Universal Service Administrative Company ("USAC") to credit (or refund) the Company for any penalties and interest imposed on the 2009 true-up of Universal Service Fund ("USF") contributions for the 2003 revenue year (as reported in the Company's 2004 Form 499-A). On September 27, 2013, the Bureau waived similar penalties and interest on a six-year delayed USAC true-up invoice issued to Outfitter Satellite, Inc. ("Outfitter"), and ordered USAC to issue a credit to Outfitter ("Outfitter Order").¹ inContact seeks an order granting identical relief based on facts and circumstances which, as detailed herein, are indistinguishable from Outfitter.

Outfitter Satellite

In Outfitter's initial 2005 Form 499-A (reporting 2004 revenues), it mistakenly reported no end-user revenues.² USAC issued a credit to Outfitter for all USF contributions during calendar year 2004.³ After the conclusion of a USAC inquiry, Outfitter revised its 2005 Form 499-A twice so as to report end-user revenues.⁴ USAC reversed the credit, and invoiced Outfitter for the full amount of the refund.⁵ However, due to a billing error, USAC neglected to invoice Outfitter until June 20, 2012, for true-up adjustments on the latest 2005 Form 499-A revision.⁶ Outfitter filed an appeal in August of 2012 wherein Outfitter sought cancellation of the true-up assessment and related penalties and interest, or in the alternative, permission to file a third revision to its 2005 Form 499-A.⁷

¹ *In re: Universal Service Contribution Methodology: Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, DA 13-1917(Sept. 27, 2013) ("Outfitter Order").

² Outfitter Order at ¶ 5.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at ¶ 6.

⁷ Outfitter Order at ¶ 6, 7.

MARASHLIAN & DONAHUE, LLC

TELEPHONE: (703) 714-1300
FACSIMILE: (703) 714-1330
EMAIL: MAIL@COMMLAWGROUP.COM
WEB: WWW.COMMLAWGROUP.COM

THE COMMLAW GROUP
1420 SPRING HILL ROAD
SUITE 401
MCLEAN, VIRGINIA 22102

Although the Bureau did not cancel Outfitter's true-up assessment, it did waive applicable interest and penalties due to USAC's six-year delay in issuing the invoice.⁸ As a result, the Bureau instructed USAC to credit Outfitter for interest and penalties associated with the 2012 true-up adjustment to the company's revised 2005 Form 499-A.⁹ The Bureau concluded that USAC's failure to bill Outfitter for the true-up for six years was inconsistent with "the public interest in effective and efficient administration of Fund contributions."¹⁰

inContact

Like Outfitter, inContact believes it was also wrongly assessed penalties and interest as a result of USAC's failure to timely issue a true-up invoice. On January 23, 2009, nearly five years after its 2004 Form 499-A filing, USAC invoiced inContact for nearly \$300,000 in true-up adjustments based on inContact's 2003 revenues ("2009 Invoice"). USAC claimed to have made a simple miscalculation in determining inContact's USF obligations based upon revenues reported in the Company's 2004 Form 499-A.

The Bureau makes clear in the Outfitter Order that a multi-year delay by USAC in discovering its own "billing mistake" justifies waiver of any penalties or interest applied during USAC's period of delay. For USAC to assess such penalties and interest during this extensive time period wrongly penalizes inContact for USAC's error. The public interest in effective administration of Fund contributions necessitates waiver of any penalties and interest imposed on inContact in relation to the 2009 Invoice and, wherefore, the Bureau should instruct USAC to issue appropriate credits, post haste.

Please contact the undersigned with questions regarding this matter.

Respectfully submitted,



Jonathan S. Marashlian
Marashlian & Donahue, LLC
1420 Spring Hill Road, Suite 401
McLean, Virginia 22102
Tel: (703) 714-1313
E-mail: jsm@commlawgroup.com

Counsel for inContact, Inc.

⁸ *Id.* at ¶¶ 8-17 and 20.

⁹ *Id.* at ¶ 20.

¹⁰ *Id.*